

REMARKS/ARGUMENTS

Claims 1-3, 5-10, 12-14 and 17-20 stand rejected under 35 U.S.C. §102(b) as being anticipated by Takashima (U.S. Patent No. 5,535,765). Such rejection is respectfully traversed.

In a statement bridging pages 2 and 3 of the aforementioned Office action, the Examiner sets forth her reasoning behind Takashima's alleged anticipation of Applicant's claims 1, 6, 8 and 9. As part of that statement, the Examiner asserts (with emphasis added):

With regard to claims 1, 6, 8-9, Takashima discloses a hair holding device (figs. 14-15) comprising a first body member (40a), a second body member (40b), the first and second body members having gripping portions (see attachment A), a hinge means (16) for pivotally connecting the first and second body members and an elastomeric means comprising at least one continuous elastomeric band (5) contacting the first and second body members in a looped configuration (fig. 15), the elastomeric means in contact with the first and second body members for biasing the first and second body members into a closed position (col. 9, lines 62-65).

The statement at column 9, lines 62-65 to which the Examiner refers is reproduced below, with emphasis added.

Next, the manual force applied to the support members 200a and 200b is relaxed whereby the frames 100a and 100b begin to close the distal ends under the elastic restoring forces of the leaf spring 301 and elastic band 50.

Applicant respectfully objects to the Examiner's application of that statement for at least two reasons.

First, in the context of the Takashima patent, it is not used to describe the embodiment of the Takashima device shown in FIGS. 14 and 15. Rather, it is used to describe the embodiment of the Takashima apparatus shown in FIGS. 19-25.

Second, and more importantly, it is an incorrect statement, not only with respect to the specific embodiment of the Takashima device shown in FIGS. 19-25 but to all embodiments of the invention described in that reference.

FIGS. 19-25 of Takashima depict a so-called "Fifth Embodiment" of the Takashima hair binder device. The written description of the "Fifth Embodiment" spans column 8, line 34-column 10, line 51. This is the only portion of the Takashima patent in which "elastic restoring forces" for closing the pivoted hair band holding frames are discussed. And, in that portion of the patent, the restoring forces are mentioned three times. In two of those citations, i.e., column 9, lines 24-33 and column 10, lines 24-35, only leaf spring 301 is described as providing the "elastic restoring force" for closing the device. There is good reason why these passages do not include the elastomeric hair holding band 50 as providing "elastic restoring force": it is because it does not provide such force, column 9, lines 62-65 notwithstanding.

In all embodiments of the Takashima apparatus, the hair binding elastic band 50 is in tension before, during and after it binds a shock of hair (identified as long hair "LH" in the Takashima drawing figures). An elastic band in tension, like a tension spring in tension, seeks to reach a lower energy level.

That is, it seeks to contract when stretched. For an elastic band stretched about the pivot axes 16 (FIGS 1-5 and 13-19), pivot axes 300 (FIGS. 13-26) and engaging pins 21 (FIGS. 6-12), that contraction can only occur about the pivot axis or pivot pin, as the case may be, with the pivot axis or pivot pin serving as the fulcrum for the contraction. Under these circumstances, therefore, the stretched elastic band tends to pull the variously disclosed frame members open rather than push them closed.

To confirm this fact, the undersigned fashioned a model of a pivoted frame assembly analogous to the several pivoted frame assemblies shown in the Takashima patent from a hinge. At their distal ends, the arms of the hinge were bent inwardly toward one another to simulate the first elastic band engaging structures shown in Takashima that engage the opposite ends of an elastic band to be placed about a user's hair. Consistent with the first elastic band engaging structures shown in Takashima, the inwardly bent ends of the hinge arms in the model are essentially in alignment with the pivot axis of the hinge when the hinge arms are in a "closed" position. To test the theory at issue, the undersigned placed one end of a rubber band on one of the inwardly bent rubber band engaging structures formed into one of the hinge arms, stretched the band around the hinge axis and seated the opposite end of the rubber band on the other inwardly bent rubber band engaging structure formed into the other of the hinge arms. During this rubber band placement process, it was necessary for the undersigned to squeeze the hinge arms together to maintain the hinge arms in their "closed" position. This led the undersigned to conclude that the arms

would be pivoted from a closed to an open position due to the contraction of the rubber band upon removal of the manually applied closing force. Indeed, the undersigned avers that that is precisely what happened when the manual closing force was removed from the hinge arms. If need be, the undersigned is willing to introduce into the record a declaration executed by him attesting to the facts of that experiment.

In addition, Applicant fashioned a device from a conventional circular, hinged, two-part hair clip which is highly similar in structure to the hair binder shown in FIGS. 2-6, 9-13 and 15-18 of Takashima. In Applicant's device, a rubber band is wrapped around the hinge axis and opposite ends of the rubber band are received on inwardly directed engaging structures formed at the distal ends of the hinged arms. That device performs exactly the same as the device made by the undersigned. The undersigned is in possession of Applicant's device and is willing to introduce into the record a declaration executed by him attesting to the facts regarding operation of Applicant's device. Still further, the undersigned would be willing to meet personally with the examiner to replicate Applicant's and his own experiments -- although the time and travel costs associated with such a brief demonstration would be substantial and Applicant would prefer not to incur them if not absolutely necessary.

Recognizing that the passage at column 9, lines 62-65 is clearly erroneous, at least as to the elastic band 50, the Takashima patent is otherwise silent with regard to the elastomeric means specifically called for in Applicant's

independent claim 1 and its method counterpart, independent claim 20, namely,

elastomeric means in contact with said first and second body members for biasing said first and second body members into a closed position and for conforming to gathered strands of a user's hair when said hair gripping portions come into contact with gathered strands of a user's hair.

In point of fact, as revealed in the experiments conducted by Applicant and the undersigned, the pivoted frame members of a device constructed analogously to those shown in the Takashima patent will be pulled apart rather than pushed together under the influence of an elastic band in tension wrapped about their common pivot axis. This is in diametric conflict with the effect achieved by the elastomeric means set forth in Applicant's independent claims 1 and 20.

Accordingly, Applicant submits that the outstanding Section 102(b) rejection of independent apparatus claim 1, its dependent claims 2, 3, 5-10, 12-14 and 17-19, and independent method claim 20 is improper and should be withdrawn.

Claims 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Takashima in view of Mooneyhan (U.S. Patent No. 4,554,934). Such rejection is respectfully traversed.

Applicant does not dispute that the Mooneyhan patent discloses a hair holding device whose first and second body members have squeezable handle portions for opening the device. Nevertheless, Mooneyhan fails to overcome the deficiencies of

the Takashima patent in relation to Applicant's independent claims 1 and 20 discussed at length hereinabove. Therefore, since no combination of the teachings of Takashima and Mooneyhan can produce the invention recited in Applicant's independent claim 1, those references likewise cannot be combined to produce the invention called for in dependent claims 15 and 16. Consequently, Applicant submits that the outstanding Section 103(a) rejection of claims 15 and 16 is improper and should be withdrawn.

Claims 4, 7 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Takashima. Such rejection is respectfully traversed.

Since it has been clearly shown herein that Takashima does not in fact disclose the invention defined in independent claim 1 -- and, in fact, leads one directly away therefrom -- Takashima does not and cannot disclose or suggest the invention prescribed in dependent claims 4, 7 and 11.

Accordingly, Applicant submits that the outstanding Section 103(a) rejection of independent claims 4, 7 and 11 is improper and should be withdrawn.

The other references cited of interest, U.S. Patent No. 2,133,145 to Jones and U.S. Patent No. 5,664,591 to Potut, have been considered but are not believed to be relevant to the presently claimed invention.

In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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